IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA U.S. Department of Justice Environment and Natural Resources Division 10th & Pennsylvania Ave., N.W. Washington, D.C. 20530 Plaintiff, v. DAIMLERCHRYSLER AG RP HPC X 408 Calwer Strasse 71059 Sindelfingen Germany MERCEDES-BENZ USA, LLC 50 Craig Road Montvale, NJ 07645 Defendants.	CASE NUMBER 1:06CV02172 JUDGE: Henry H. Kennedy DECK TYPE: Administrative Agency Rev DATE STAMP: 12/21/2006

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

NATURE OF ACTION

1. This is a civil action brought pursuant to Sections 204 and 205 of the Clean Air Act ("Act"), 42 U.S.C. §§ 7523 and 7524, for injunctive relief and the assessment of civil penalties against defendants DaimlerChrysler AG and Mercedes-Benz USA, LLC (collectively the "Defendants") for violations of the Act and regulations promulgated thereunder.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 204 and 205 of the Act, 42 U.S.C. §§ 7523 and 7524, and 28 U.S.C. §§ 1331, 1345, and 1355. This Court also has in personam jurisdiction over the Defendants and/or Defendants have consented to in personam jurisdiction for the purposes of this action.

3. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391(b) and Section 205 of the Act, 42 U.S.C. §7524, because Defendants are subject to personal jurisdiction in this district and/or Defendants have consented to in personam jurisdiction for purposes of this action and because the Administrator of EPA has his principal place of business in this district.

DEFENDANTS

4. DaimlerChrysler AG, a corporation formed under the laws of Germany, is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e), and is a "manufacturer" within the meaning of Section 216(1) of the Act, 42 U.S.C. § 7550(1).

5. Mercedes-Benz USA, LLC, a corporation incorporated under the laws of Delaware, is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. §7602(e), and is a "manufacturer" within the meaning of Section 216(l) of the Act, 42 U.S.C. § 7550(1).

6. At all times relevant to this action, Defendants were engaged in the business of manufacturing new motor vehicles to be sold in the United States and/or in the importation/distribution of such vehicles in the United States.

STATUTORY AND REGULATORY BACKGROUND

7. This action arises under Title II of the Act, 42 U.S.C. § 7521 et seq., and the regulations promulgated thereunder, relating to the requirement that a manufacturer report emission-related defects in its vehicles to EPA.

Reporting Obligations

8. Section 203(a)(2)(A) of the Act, 42 U.S.C. § 7522(a)(2)(A), prohibits any person from failing or refusing to make reports or provide information to EPA as required by Section 208 of the Act, 42 U.S.C. § 7542.

9. Section 208(a) of the Act, 42 U.S.C. § 7542(a), requires every manufacturer of new motor vehicles to establish and maintain records, perform testing, make reports, and provide information as EPA may reasonably require to determine whether the manufacturer has acted or is acting in compliance with Part A of Title II of the Act.

10. EPA has promulgated regulations requiring manufacturers to report to EPA emission-related defects in motor vehicles. 40 C.F.R. § 85.1903(b) requires a manufacturer of motor vehicles to file an emissions defect information report ("EDIR") with EPA within 15 working days after the manufacturer determines: (a) in accordance with the procedures established by the manufacturer to identify safety related defects pursuant to the National Traffic and Motor Vehicle Safety Act, 49 U.S.C. § 30101 et seq., that a specific emission-related defect exists; and (b) that the specific emission-related defect exists in twenty-five or more vehicles or engines of the same model year.

11. An "emission-related defect" is defined by 40 C.F.R. § 85.1902(b) as "a defect in design, materials, or workmanship in a device, system, or assembly described in the approved

Application for Certification (required by 40 CFR. 86.1843-01 and 86.1844-01, 40 CFR 86.098-22 and like provisions of subpart A [of 40 CFR Part 85] and 40 CFR Part 86) which affects any parameter or specification enumerated in Appendix VIII [of 40 C.F.R. Part 85]." Manufacturers submit an Application for Certification to EPA to obtain a "Certificate of Conformity" pursuant to Section 206(a)(1) of the Act, 42 U.S.C. § 206(a)(1), allowing the sale in the United States of motor vehicles or motor-vehicle engines covered by the Certificate. Appendix VIII of 40 C.F.R. Part 85 sets forth various parameters and specifications that can impact on the emission of air pollutants from motor vehicles.

12. Pursuant to 40 C.F.R. § 85.1901, the obligation to file an EDIR affecting a given class or category of vehicles remains applicable for five years from the end of the model year in which the vehicles were manufactured. Pursuant to 40 C.F.R. § 1904(b), items of information required to be included in an EDIR that are either not available at the time of filing or are significantly revised shall be submitted as they become available.

GENERAL ALLEGATIONS

Mass Airflow Sensor Defect

13. The mass air flow sensor ("MAF") is a device that is used to determine the amount of air flowing into the engine.

14. The MAF in certain model year 1998 - 2000 Mercedes-Benz vehicles may become contaminated over time, which can cause a deviation in the MAF signal. The MAF contains an electrical circuit embedded in a protective silicon gel. Hydrocarbon residuals from the combustion process entering the MAF air-duct housing can cause the release of substances from the silicon gel, which in turn can contaminate the internal temperature sensors and the

heating element of the MAF. Contamination of the MAF can cause sensor signal deviation, especially at idle or low engine load.

15. This potential problem with the MAF in certain model year 1998 - 2000 Mercedes-Benz vehicles is an emission-related defect because it is a defect in a device described in Defendants' Certificates of Conformity which affects certain of the parameters listed in Appendix VIII of 40 C.F.R. Part 85.

16. Approximately 666,000 Mercedes-Benz vehicles have the potential to develop this MAF problem.

17. Defendants submitted an EDIR with respect to this emission-related defect on July 27, 2004.

18. As a result of information available to Defendants concerning this emission-related defect, Defendants determined, or should have determined, that this emission-related defect existed in 25 or more vehicles or engines of the same model year more than 15 working days prior to July 27, 2004. Therefore, Defendants failed to file the EDIR within the time period required by 40 C.F.R. § 85.1903(b).

Underfloor Catalytic Converter Defect

19. The catalytic converter ("catalyst") is a device installed in the exhaust system of an internal combustion engine that controls emissions. Typically, the catalyst consists of a metallic can or shell containing a ceramic honeycomb or "brick" coated with precious metals that store or release nitrogen or oxygen atoms, causing reactions that reduce emissions of pollutants including hydrocarbons, carbon monoxide, and oxides of nitrogen. The brick is held in place inside the can by a mat intended to protect the brick from movement and friction during vehicle

operations. Vehicles sold by Defendants have both primary underhood catalysts and secondary underfloor catalysts. The exhaust first passes through the primary under-hood catalyst, which is located nearer the engine, and then through the secondary under-floor catalyst.

20. The ceramic monolith substrate in the secondary under-floor catalyst of certain model year 1998 - 2003 Mercedes-Benz vehicles with M112 or M113 engines may be damaged under certain circumstances, which can result in a reduction in the efficiency of the secondary portion of the catalyst system. Secondary under-floor catalysts are exposed to lower exhaust gas temperatures than the primary under-hood catalysts because they are located further downstream from the exhaust manifold. Under certain driving conditions, the secondary catalysts in these vehicles may not experience sufficient initial thermal mat expansion during vehicle break-in to adequately fix the monolith in place within the under-floor can. This rattling can reduce the durability of the under-floor catalyst.

21. This potential problem with the under-floor catalyst in certain 1998 - 2003 model year Mercedes-Benz vehicles is an emission-related defect because it is a defect in a device described in Defendants' Certificates of Conformity which affects certain of the parameters listed in Appendix VIII of 40 C.F.R. Part 85.

22. Approximately 404,000 Mercedes-Benz vehicles have the potential to develop this under-floor catalyst problem.

23. Defendants submitted an EDIR with respect to this emission-related defect on July 27, 2004.

24. As a result of information available to Defendants concerning this emissions-related defect, Defendants determined, or should have determined, that this emission-related

defect existed in 25 or more vehicles or engines of the same model year more than 15 working days prior to July 27, 2004. Therefore, Defendants failed to file the EDIR within the time period required by 40 C.F.R. § 85.1903(b).

Fuel Filler Cap Defect

25. The fuel filler cap seals the gas tank, preventing gasoline evaporation from the fuel tank and also providing the proper seal of the entire fuel system.

26. The fuel filler cap on certain model year 1998 - 2003 Mercedes-Benz vehicles may experience slippage before the end of the vehicles' useful life. On the affected vehicles, the fuel filler cap is a multi-part assembly which includes a cap knob that is designed to rotate independently of the sealing portion of the cap. The cap knob transmits the appropriate torque to the sealing portion of the cap through a slip ring and spring clamp arrangement. After extended use, some cap knobs may rotate without transferring sufficient torque to the sealing portion of the cap.

27. This potential problem with the fuel filler cap in certain model year 1998 - 2003 Mercedes-Benz vehicles is an emission-related defect because it is a defect in a device described in Defendants' Certificates of Conformity which affects certain of the parameters listed in Appendix VIII of 40 C.F.R. Part 85.

28. Approximately 680,000 Mercedes-Benz vehicles have the potential to develop this fuel filler cap problem.

29. Defendants submitted an EDIR with respect to this emission-related defect on November 8, 2004.

30. As a result of information available to Defendants concerning this emission-related defect, Defendants determined, or should have determined, that this emission-related defect existed in 25 or more vehicles or engines of the same model year more than 15 working days prior to November 8, 2004. Therefore, Defendants failed to file the EDIR within the time period required by 40 C.F.R. § 85.1903(b).

Underhood Catalytic Converter Defect

31. As alleged above, the catalyst is a device installed in the exhaust system of an internal combustion engine to control emissions.

32. The under-hood catalysts of certain model year 1999 - 2001 M-Class Mercedes-Benz vehicles may develop circumferential cracks along the weld seam between the inlet funnel and the can body. These cracks could result in untreated exhaust entering the atmosphere through the cracks and/or false information on fuel mixture being transmitted to the oxygen sensor.

33. This potential problem with the catalysts in certain model year 1999 - 2001 Mercedes-Benz vehicles is an emission-related defect because it is a defect in a device described in Defendants' Certificates of Conformity which affects certain of the parameters listed in Appendix VIII of 40 C.F.R. Part 85.

34. Approximately 79,000 Mercedes-Benz vehicles have the potential to develop this catalyst problem.

35. Defendants submitted an EDIR with respect to this emission-related defect on February 28, 2005.

36. As a result of information available to Defendants concerning this emissions-related defect, Defendants determined, or should have determined, that this emission-related defect existed in 25 or more vehicles or engines of the same model year more than 15 working days prior to February 28, 2005. Therefore, Defendants failed to file the EDIR within the time period required by 40 C.F.R. § 85.1903(b).

Air-Injection Pump Defect

37. Certain Mercedes-Benz vehicles have an electronically-operated air injection pump. The air injection pump operates for a short time during engine warm-up to provide extra oxygen to the catalytic converter.

38. The air injection pumps in certain 2002 - 2006 model year Mercedes-Benz vehicles may malfunction, causing the pump to run continuously rather than only during engine warm-up. This continual operation of the pump causes it to overheat and fail.

39. This potential problem with the air injection pumps in certain model year 2002 - 2006 Mercedes-Benz vehicles is an emission-related defect because it is a defect in a device described in Defendants' Certificates of Conformity which affects certain of the parameters listed in Appendix VIII of 40 C.F.R. Part 85.

40. Approximately 29,000 Mercedes-Benz vehicles have the potential to develop this air injection pump problem.

41. Defendants submitted an EDIR with respect to this emission-related defect on July 15, 2005.

42. As a result of information available to Defendants concerning this emissions-related defect, Defendants determined, or should have determined, that this emission-related

defect existed in 25 or more vehicles or engines of the same model year more than 15 working days prior to July 15, 2005. Therefore, Defendants failed to file the EDIR within the time period required by 40 C.F.R. § 85.1903(b).

Fuel Tank Pressure Sensor Defect

43. The fuel tank pressure sensor provides tank pressure information to the on-board diagnostic system to determine if a leak exists that would allow fuel vapor to escape into the atmosphere.

44. The fuel tank pressure sensor on certain model year 2001 Mercedes-Benz vehicles may experience an electronic fault which could affect the control parameters and/or calibrations for the emission control related warning system.

45. This potential problem with the fuel tank pressure sensors in certain model year 2000 Mercedes-Benz vehicles is an emission-related defect because it is a defect in a device described in Defendants' Certificates of Conformity which affects certain of the parameters listed in Appendix VIII of 40 C.F.R. Part 85.

46. Approximately 43,100 Mercedes-Benz vehicles have the potential to develop this fuel tank pressure sensor problem.

47. Defendants submitted an EDIR with respect to this emission-related defect on July 15, 2005.

48. As a result of information available to Defendants concerning this emissions-related defect, Defendants determined, or should have determined, that this emission-related defect existed in 25 or more vehicles or engines of the same model year more than 15 working days prior to July 15, 2005. Therefore, Defendants failed to file the EDIR within the time period required by 40 C.F.R. § 85.1903(b).

Spark Plug Cable Defect

49. The spark plug connectors on a vehicle connect the spark plugs to the electrical current emanating from the distributor of the vehicle.

50. The spark plug connectors on certain model year 2001 - 2002 Mercedes-Benz vehicles may experience a short circuit that can affect spark plug voltage and keep the spark plug from firing.

51. This potential problem with the spark plug connectors in certain model year 2001-2002 Mercedes-Benz vehicles is an emission-related defect because it is a defect in a device described in Defendants' Certificates of Conformity which affects certain of the parameters listed in Appendix VIII of 40 C.F.R. Part 85.

52. Approximately 111,000 Mercedes-Benz vehicles have the potential to develop this spark plug connector problem.

53. Defendants submitted an EDIR with respect to this emission-related defect on July 15, 2005.

54. As a result of information available to Defendants concerning this emissions-related defect, Defendants determined, or should have determined, that this emission-related defect existed in 25 or more vehicles or engines of the same model year more than 15 working days prior to July 15, 2005. Therefore, Defendants failed to file the EDIR within the time period required by 40 C.F.R. § 85.1903(b).

Ignition Module Defect

55. The ignition module on a vehicle provides a high-voltage electrical charge to the spark plug to ignite the fuel and air mixture in the engine cylinder.

56. The ignition modules on certain model year 2001 Mercedes-Benz vehicles may fail due to high voltage discharge on the coil.

57. This potential problem with the ignition modules in certain model year 2001 Mercedes-Benz vehicles is an emission-related defect because it is a defect in a device described in Defendants' Certificates of Conformity which affects certain of the parameters listed in Appendix VIII of 40 C.F.R. Part 85.

58. Approximately 2,200 Mercedes-Benz vehicles have the potential to develop this ignition module problem.

59. Defendants submitted an EDIR with respect to this emission-related defect on July 15, 2005.

60. As a result of information available to Defendants concerning this emissions-related defect, Defendants determined, or should have determined, that this emission-related defect existed in 25 or more vehicles or engines of the same model year more than 15 working days prior to July 15, 2005. Therefore, Defendants failed to file the EDIR within the time period required by 40 C.F.R. § 85.1903(b).

CLAIM FOR RELIEF

61. The United States hereby realleges Paragraphs 14 - 60 of the Complaint.

62. Section 208 of the Act, 42 U.S.C. § 7542, requires all manufacturers of new motor vehicles to make reports and provide information reasonably required by EPA in connection with Subchapter II, Part A of the Act, which deals with motor vehicle emissions.

63. Section 203(a)(2) of the Act, 42 U.S.C. § 7522(a)(2), prohibits any person from failing to submit a report required under Section 208 of the Act.

64. The EDIR reports required to be filed by 40 C.F.R. Part 85, Subpart T, are reports that are required to be submitted pursuant to Section 208 of the Act.

65. Defendants' failure to file EDIRs in a timely fashion, as alleged at Paragraphs 14 - 60 above, was a violation of Section 203(a)(2) of the Act.

66. Pursuant to Section 204(a) of the Act, 42 U.S.C. §7523, Defendants are liable for injunctive relief with respect to each violation of Section 203(a)(2) of the Act.

67. Pursuant to Section 205(a) of the Act, 42 U.S.C. § 7524(a), Defendants are liable for civil penalties for each separate violation of Section 203(a)(2) of the Act and for each and every day such separate violations continued.

PRAYER FOR RELIEF

Wherefore, plaintiff, the United States of America, respectfully demands judgment against Defendants, as follows:

A. Permanently enjoining Defendants from failing or refusing to file with EPA an EDIR within fifteen days of determining, in good faith, that a specific emissions-related defect exists and that such defect exists in 25 or more vehicles of the same model year;

B. Ordering Defendants to take appropriate action to remedy the violations of Section 203(a)(2)(A) of the Act, 42 U.S.C. § 42 U.S.C. § 7522(a)(2)(A), alleged above; and

C. Assessing civil penalties, pursuant to Section 205(a) of the Act, 42 U.S.C. § 7524(a), and the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, codified as amended at 40 C.F.R. Part 19, against Defendants for each violation of Section

203(a)(2)(A) of the Act, alleged above, of up to $27,500 per day per violation occurring from January 30, 1997 to March 15, 2004, and of up to $32,500 per day per violation occurring after March 15, 2004.

Respectfully submitted,

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